

House Study Bill 27 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON HOLT)

A BILL FOR

1 An Act relating to the opening administration, and termination
2 of adult guardianships and adult and minor conservatorships
3 and terminology changes to the probate code.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

GUARDIANS AND CONSERVATORSHIPS

Section 1. Section 633.556, subsections 5 and 8, Code 2021, are amended to read as follows:

5. The petition shall list the name and address, to the extent known, of the following:

a. The name and address of the proposed guardian or conservator and the reason the proposed guardian or conservator should be selected.

b. Any spouse of the respondent.

c. Any adult children of the respondent.

d. Any parents of the respondent.

e. Any adult, who has ~~had~~ lived with or been the primary ~~care of caregiver for the respondent or with whom the respondent has lived for at least six months prior to at any time during the six-month period immediately preceding the filing of the petition, or~~ and any institution or facility where the respondent has resided for at least six months prior to at any time during the six-month period immediately preceding the filing of the petition.

f. Any legal representative or representative payee of the respondent.

g. Any person designated as an attorney in fact in a durable power of attorney for health care which is valid under chapter 144B, or any person designated as an agent in a durable power of attorney which is valid under [chapter 633B](#).

8. ~~The~~ A petition for conservator shall provide a brief description of the respondent's alleged functional limitations that make the respondent unable to communicate or carry out important decisions concerning the respondent's financial affairs. A petition for guardian shall provide a brief description of the respondent's alleged functional limitations that make the respondent unable to provide for the respondent's safety, or to provide for necessities.

Sec. 2. Section 633.560, subsection 3, Code 2021, is amended

1 to read as follows:

2 3. The court shall require the proposed guardian or
3 conservator to attend the hearing on the petition but the court
4 may excuse the proposed guardian's or conservator's attendance
5 for good cause shown.

6 Sec. 3. Section 633.562, subsections 1 and 3, Code 2021, are
7 amended to read as follows:

8 1. If the court determines that the appointment of a court
9 visitor would be in the best interest of the respondent,
10 the court shall appoint a court visitor at the expense
11 of the respondent or the respondent's estate, or, if the
12 respondent is indigent, the cost of the court visitor shall
13 be assessed against the county in which the proceedings are
14 pending. The court may appoint any qualified person as a court
15 visitor in a guardianship or conservatorship proceeding. A
16 person is qualified to serve as court visitor if the person
17 has demonstrated sufficient knowledge of guardianships or
18 conservatorships to adequately perform the duties in subsection
19 3.

20 3. Unless otherwise enlarged or circumscribed by the court,
21 the duties of a court visitor with respect to the respondent
22 shall include all of the following:

23 a. Conducting an ~~initial~~ in-person interview with the
24 respondent.

25 b. Explaining to the respondent the substance of the
26 petition, and the purpose and effect of the guardianship or
27 conservatorship proceeding, ~~the rights of the respondent at~~
28 ~~the hearing, and the general powers and duties of a guardian~~
29 ~~or conservator.~~

30 c. Determining, to the extent possible, the views of the
31 respondent regarding the proposed guardian or conservator,
32 ~~the proposed guardian's or conservator's powers and duties,~~
33 and the scope and duration of the proposed guardianship or
34 conservatorship.

35 Sec. 4. Section 633.562, Code 2021, is amended by adding the

1 following new subsection:

2 NEW SUBSECTION. 7. A court visitor shall be discharged
3 from all further duties upon appointment of a guardian or
4 conservator, unless otherwise ordered by the court. The court
5 may order a court visitor to continue to serve if the court
6 determines continued service would be in the best interest of
7 the protected person. If the court continues the service of
8 the court visitor, the court may limit the direct duties of
9 the court visitor as the court deems necessary, in which case
10 the court visitor shall thereafter continue to serve until
11 discharged by the court.

12 Sec. 5. Section 633.563, subsection 1, Code 2021, is amended
13 by adding the following new paragraph:

14 NEW PARAGRAPH. c. The petition is for opening a
15 conservatorship for a minor.

16 Sec. 6. Section 633.564, subsections 1 and 2, Code 2021, are
17 amended to read as follows:

18 1. The court shall request criminal record checks and
19 checks of the child abuse, dependent adult abuse, and sexual
20 offender registries in this state for all proposed guardians
21 and conservators, other than financial institutions with Iowa
22 trust powers, unless a proposed guardian or conservator has
23 undergone the background checks required by this section within
24 six months prior to the filing of a petition and the background
25 checks have been provided to the court.

26 2. The court shall review the results of background checks
27 in determining the suitability of a proposed guardian or
28 conservator for appointment, and may, for good cause, share
29 with the respondent, the respondent's attorney, the protected
30 person's attorney, and the proposed guardian or conservator,
31 the results of background checks, unless otherwise prohibited
32 by law.

33 Sec. 7. Section 633.569, subsection 1, Code 2021, is amended
34 to read as follows:

35 1. A person authorized to file a petition under section

1 ~~633.552, 633.553, or 633.554~~ 633.556 or 633.557 may file an
2 application for the emergency appointment of a temporary
3 guardian or conservator.

4 Sec. 8. Section 633.569, subsection 3, paragraph a, Code
5 2021, is amended to read as follows:

6 a. There is not sufficient time to file a petition, serve
7 notice, and hold a hearing pursuant to ~~section 633.552,~~
8 ~~633.553, or 633.554~~ sections 633.556, 633.557, 633.558,
9 633.559, and 633.560.

10 Sec. 9. Section 633.635, subsection 1, Code 2021, is amended
11 to read as follows:

12 1. The order by the court appointing a guardian shall state
13 the basis for the guardianship pursuant to section 633.552
14 and the date on which the first reporting period for the
15 guardianship will end.

16 Sec. 10. Section 633.669, Code 2021, is amended to read as
17 follows:

18 ~~633.669 Reporting requirements — assistance by clerk~~ Reports
19 by guardians.

20 1. A guardian appointed by the court under this chapter
21 shall file with the court the following written verified
22 reports which shall not be waived by the court:

23 a. An initial care plan filed within sixty days of
24 appointment. The information in the initial care plan shall
25 include but not be limited to the following information:

26 (1) The current residence of the protected person and the
27 guardian's plan for the protected person's living arrangements.

28 (2) The guardian's plan for payment of the protected
29 person's living expenses and other expenses.

30 (3) The protected person's health status and health care
31 needs, and the guardian's plan for meeting the protected
32 person's needs for medical, dental, and other health care
33 needs.

34 (4) If applicable, the guardian's plan for the provision of
35 other professional services needed by the protected person.

1 (5) If applicable, the guardian's plan for meeting the
2 educational, training, and vocational needs of the protected
3 person. For protected persons with conservatorships, any step
4 the guardian plans to take to develop or restore the ability of
5 the protected person to manage the conservatorship estate.

6 (6) If applicable, the guardian's plan for facilitating the
7 participation of the protected person in social activities.

8 (7) The guardian's plan for facilitating contacts between
9 the protected person and the protected person's family members
10 and other persons significant persons in the life of the
11 protected person.

12 (8) The guardian's plan for contact with, and activities on
13 behalf of, the protected person.

14 (9) An estimate of the total amount of fees the guardian
15 anticipates charging per year and a statement or list of the
16 amount the guardian proposes to charge for each service the
17 guardian anticipates providing to the protected person.

18 Ob. The guardian shall file an amended plan when there has
19 been a substantial change in circumstances or the guardian
20 seeks to deviate significantly from the plan. The guardian
21 must obtain approval of the amended plan before implementing
22 any of the amended plan's provisions.

23 b. An annual report, filed within sixty days of the close
24 of the reporting period, unless the court otherwise orders on
25 good cause shown. ~~The information in the annual report shall~~
26 include but not be limited to the following information:

27 (1) The current living arrangements of the protected
28 person.

29 (2) The sources of payment for the protected person's living
30 expenses and other expenses.

31 (3) A description, if applicable, of the following:

32 (a) The protected person's physical and mental health
33 status and the medical, dental, and other professional services
34 provided to the protected person.

35 (b) If applicable, the protected person's employment status

1 and the educational, training, and vocational services provided
2 to the protected person.

3 (c) The contact of the protected person with family members
4 and other significant persons.

5 (d) The nature and extent of the guardian's visits with, and
6 activities on behalf of, the protected person.

7 (4) The guardian's recommendation as to the need for
8 continuation of the guardianship.

9 (5) The ability of the guardian to continue as guardian.

10 (6) The need of the guardian for assistance in providing or
11 arranging for the provision of the care and protection of the
12 protected person.

13 c. A final report within thirty days of the termination
14 of the guardianship under [section 633.675](#) unless that time is
15 extended by the court.

16 2. The court shall develop a simplified uniform reporting
17 form for use in filing the required reports.

18 3. The clerk of the court shall notify the guardian in
19 writing of the reporting requirements and shall provide
20 information and assistance to the guardian in filing the
21 reports.

22 4. Reports of guardians shall be reviewed and approved by a
23 district court judge or referee.

24 Sec. 11. Section 633.670, subsection 1, paragraph a,
25 subparagraphs (3) and (4), Code 2021, are amended by striking
26 the subparagraphs.

27 Sec. 12. Section 633.670, subsection 1, paragraphs b, c, and
28 d, Code 2021, are amended to read as follows:

29 ~~b. Within two days after filing the initial plan, the~~
30 The conservator shall give provide notice of the filing of
31 the initial plan ~~with~~ and a copy of the initial plan to the
32 protected person, the protected person's attorney and court
33 visitor, if any, and others as directed by the court. The
34 notice must state that any person entitled to a copy of the
35 plan must file any objections to the plan not later than

1 ~~fifteen days after it is filed~~ twenty days from the date of
2 mailing notice of filing the initial plan.

3 ~~c. At least~~ If no objections have been filed within twenty
4 ~~days after the plan has been filed, the court shall review and~~
5 ~~determine whether the plan should be approved or revised, after~~
6 ~~considering objections filed and whether the plan is consistent~~
7 ~~with the conservator's powers and duties~~ mailing notice of
8 the filing of the initial plan, the conservator shall submit
9 a proposed order to the court approving the initial plan.
10 Upon the court's approval of the plan under this subsection,
11 the conservator shall provide a copy of the approved plan and
12 order approving the plan to the protected person, the protected
13 person's attorney and court visitor, if any, and others as
14 directed by the court.

15 ~~d. After approval by the court, the conservator shall~~
16 ~~provide a copy of the approved plan and order approving the~~
17 ~~plan to the protected person, the protected person's attorney~~
18 ~~and court visitor, if any, and others as directed by the court.~~
19 If any objections to the proposed plan are filed within twenty
20 days after the conservator has mailed notice of the filing of
21 the plan, the conservator shall request that the matter be set
22 for hearing and provide notice of the hearing date, time, and
23 place to the same parties who were sent copies of the initial
24 plan. Following the hearing on the conservator's proposed
25 plan, the conservator shall provide a copy of the approved
26 plan and order approving the plan to the protected person, the
27 protected person's attorney and court visitor, if any, and
28 others as directed by the court.

29 Sec. 13. Section 633.670, subsection 3, paragraph a, Code
30 2021, is amended by adding the following new subparagraphs:

31 NEW SUBPARAGRAPH. (7A) All amounts received from any source
32 during the period.

33 NEW SUBPARAGRAPH. (7B) Any changes in investments.

34 NEW SUBPARAGRAPH. (7C) Recommendations of the conservator
35 for retention or disposition of property.

1 Sec. 14. Section 633.670, subsection 3, paragraph b,
2 subparagraph (1), Code 2021, is amended to read as follows:

3 (1) ~~On an annual basis within~~ Within sixty days of the end
4 of the reporting period unless the court orders an extension
5 for good cause shown in accordance with the rules of probate
6 procedure.

7 Sec. 15. Section 633.675, subsections 2 and 3, Code 2021,
8 are amended to read as follows:

9 2. The court shall terminate a guardianship if it finds ~~by~~
10 ~~clear and convincing evidence~~ that the basis for appointing a
11 guardian pursuant to [section 633.552](#) has not been established.

12 3. The court shall terminate a conservatorship if the court
13 finds ~~by clear and convincing evidence~~ that the basis for
14 appointing a conservator pursuant to [section 633.553](#) or [633.554](#)
15 is not satisfied.

16 DIVISION II

17 TERMINOLOGY CHANGES

18 Sec. 16. Section 633.3, subsections 9, 17, 22, and 23, Code
19 2021, are amended to read as follows:

20 9. *Conservator* — means a person appointed by the court
21 to have the custody and control of the property of a ~~ward~~
22 protected person under the provisions of this probate code.

23 17. *Estate* — the real and personal property of either a
24 decedent or a ~~ward~~ protected person, and may also refer to the
25 real and personal property of a trust described in section
26 633.10.

27 22. *Guardian* — means the person appointed by the court to
28 have the custody of the person of the ~~ward~~ protected person
29 under the provisions of this probate code.

30 23. *Guardian of the property* — at the election of the
31 person appointed by the court to have the custody and care of
32 the property of a ~~ward~~ protected person, the term "*guardian of*
33 *the property*" may be used, which term shall be synonymous with
34 the term "*conservator*".

35 Sec. 17. Section 633.78, subsection 1, unnumbered paragraph

1 1, Code 2021, is amended to read as follows:

2 A fiduciary under this chapter may present a written request
3 to any person for the purpose of obtaining property owned by
4 a decedent or by a ~~ward~~ protected person of a conservatorship
5 for which the fiduciary has been appointed, or property to
6 which a decedent or ~~ward~~ protected person is entitled, or
7 for information about such property needed to perform the
8 fiduciary's duties. The request must contain statements
9 confirming all of the following:

10 Sec. 18. Section 633.78, subsection 1, paragraph b, Code
11 2021, is amended to read as follows:

12 b. The request has been signed by all fiduciaries acting on
13 behalf of the decedent or ~~ward~~ protected person.

14 Sec. 19. Section 633.78, subsection 4, paragraph a, Code
15 2021, is amended to read as follows:

16 a. Damages sustained by the decedent's or ~~ward's~~ protected
17 person's estate.

18 Sec. 20. Section 633.80, Code 2021, is amended to read as
19 follows:

20 **633.80 Fiduciary of a fiduciary.**

21 A fiduciary has no authority to act in a matter wherein the
22 fiduciary's decedent or ~~ward~~ protected person was merely a
23 fiduciary, except that the fiduciary shall file a report and
24 accounting on behalf of the decedent or ~~ward~~ protected person
25 in said matter.

26 Sec. 21. Section 633.93, Code 2021, is amended to read as
27 follows:

28 **633.93 Limitation on actions affecting deeds.**

29 No action for recovery of any real estate sold by any
30 fiduciary can be maintained by any person claiming under the
31 deceased, the ~~ward~~ protected person, or a beneficiary, unless
32 brought within five years after the date of the recording of
33 the conveyance.

34 Sec. 22. Section 633.112, Code 2021, is amended to read as
35 follows:

1 **633.112 Discovery of property.**

2 The court may require any person suspected of having
3 possession of any property, including records and documents,
4 of the decedent, ~~ward~~ protected person, or the estate, or of
5 having had such property under the person's control, to appear
6 and submit to an examination under oath touching such matters,
7 and if on such examination it appears that the person has the
8 wrongful possession of any such property, the court may order
9 the delivery thereof to the fiduciary. Such a person shall be
10 liable to the estate for all damages caused by the person's
11 acts.

12 Sec. 23. Section 633.123, subsection 1, paragraph b,
13 subparagraph (3), Code 2021, is amended to read as follows:

14 (3) The needs and rights of the beneficiaries or the ~~ward~~
15 protected person.

16 Sec. 24. Section 633.580, subsections 1 and 4, Code 2021,
17 are amended to read as follows:

18 1. The name, age, and last known post office address of the
19 proposed ~~ward~~ protected person.

20 4. A general description of the property of the proposed
21 ~~ward~~ protected person within this state and of the proposed
22 ~~ward's~~ protected person's right to receive property; also, the
23 estimated present value of the real estate, the estimated value
24 of the personal property, and the estimated gross annual income
25 of the estate. If any money is payable, or to become payable,
26 to the proposed ~~ward~~ protected person by the United States
27 through the United States department of veterans affairs, the
28 petition shall so state.

29 Sec. 25. Section 633.591A, Code 2021, is amended to read as
30 follows:

31 **633.591A Voluntary petition for appointment of conservator**
32 **for a minor — standby basis.**

33 A person having physical and legal custody of a minor
34 may execute a verified petition for the appointment of a
35 standby conservator of the proposed ~~ward's~~ protected person's

1 property, upon the express condition that the petition shall
2 be acted upon by the court only upon the occurrence of an event
3 specified or the existence of a described condition of the
4 mental or physical health of the petitioner, the occurrence
5 of which event, or the existence of which condition, shall be
6 established in the manner directed in the petition.

7 Sec. 26. Section 633.603, Code 2021, is amended to read as
8 follows:

9 **633.603 Appointment of foreign conservators.**

10 When there is no conservatorship, nor any application
11 therefor pending, in this state, the duly qualified foreign
12 conservator or guardian of a nonresident ~~ward~~ protected
13 person may, upon application, be appointed conservator of the
14 property of such person in this state; provided that a resident
15 conservator is appointed to serve with the foreign conservator;
16 and provided further, that for good cause shown, the court
17 may appoint the foreign conservator to act alone without the
18 appointment of a resident conservator.

19 Sec. 27. Section 633.604, Code 2021, is amended to read as
20 follows:

21 **633.604 Application.**

22 The application for appointment of a foreign conservator
23 or guardian as conservator in this state shall include the
24 name and address of the nonresident ~~ward~~ protected person, and
25 of the nonresident conservator or guardian, and the name and
26 address of the resident conservator to be appointed. It shall
27 be accompanied by a certified copy of the original letters
28 or other authority conferring the power upon the foreign
29 conservator or guardian to act as such. The application
30 shall also state the cause for the appointment of the foreign
31 conservator to act as sole conservator, if such be the case.

32 Sec. 28. Section 633.605, Code 2021, is amended to read as
33 follows:

34 **633.605 Personal property.**

35 A foreign conservator or guardian of a nonresident may

1 be authorized by the court of the county wherein such ~~ward~~
2 protected person has personal property to receive the same upon
3 compliance with the provisions of **sections 633.606, 633.607** and
4 633.608.

5 Sec. 29. Section 633.607, Code 2021, is amended to read as
6 follows:

7 **633.607 Order for delivery.**

8 Upon the filing of the bond as above provided, and the court
9 being satisfied with the amount thereof, it shall order the
10 personal property of the ~~ward~~ protected person delivered to
11 such conservator or guardian.

12 Sec. 30. Section 633.633, Code 2021, is amended to read as
13 follows:

14 **633.633 Provisions applicable to all fiduciaries shall**
15 **govern.**

16 The provisions of this probate code applicable to all
17 fiduciaries shall govern the appointment, qualification, oath
18 and bond of guardians and conservators, except that a guardian
19 shall not be required to give bond unless the court, for good
20 cause, finds that the best interests of the ~~ward~~ protected
21 person require a bond. The court shall then fix the terms and
22 conditions of such bond.

23 Sec. 31. Section 633.633B, Code 2021, is amended to read as
24 follows:

25 **633.633B Tort liability of guardians and conservators.**

26 The fact that a person is a guardian or conservator shall not
27 in itself make the person personally liable for damages for the
28 acts of the ~~ward~~ protected person.

29 Sec. 32. Section 633.636, Code 2021, is amended to read as
30 follows:

31 **633.636 Effect of appointment of guardian or conservator.**

32 The appointment of a guardian or conservator shall not
33 constitute an adjudication that the ~~ward~~ protected person is of
34 unsound mind.

35 Sec. 33. Section 633.637, Code 2021, is amended to read as

1 follows:

2 **633.637 Powers of ward protected person.**

3 1. A ward protected person for whom a conservator has been
4 appointed shall not have the power to convey, encumber, or
5 dispose of property in any manner, other than by will if the
6 ward protected person possesses the requisite testamentary
7 capacity, unless the court determines that the ward protected
8 person has a limited ability to handle the ward's protected
9 person's own funds. If the court makes such a finding, the
10 court shall specify to what extent the ward protected person
11 may possess and use the ward's protected person's own funds.

12 2. Any modification of the powers of the ward protected
13 person that would be more restrictive of the ward's protected
14 person's control over the ward's protected person's financial
15 affairs shall be based upon clear and convincing evidence
16 and the burden of persuasion is on the conservator. Any
17 modification that would be less restrictive of the ward's
18 protected person's control over the ward's protected person
19 financial affairs shall be based upon proof in accordance with
20 the requirements of [section 633.675](#).

21 Sec. 34. Section 633.637A, Code 2021, is amended to read as
22 follows:

23 **633.637A Rights of ward protected person under guardianship.**

24 An adult ward protected person under a guardianship has the
25 right of communication, visitation, or interaction with other
26 persons upon the consent of the adult ward protected person,
27 subject to [section 633.635, subsection 2](#), paragraph "i", and
28 section 633.635, subsection 3, paragraph "c". If an adult ward
29 protected person is unable to give express consent to such
30 communication, visitation, or interaction with a person due
31 to a physical or mental condition, consent of an adult ward
32 protected person may be presumed by a guardian or a court based
33 on an adult ward's protected person's prior relationship with
34 such person.

35 Sec. 35. Section 633.638, Code 2021, is amended to read as

1 follows:

2 **633.638 Presumption of fraud.**

3 If a conservator be appointed, all contracts, transfers and
4 gifts made by the ~~ward~~ protected person after the filing of the
5 petition shall be presumed to be a fraud against the rights
6 and interest of the ~~ward~~ protected person except as otherwise
7 directed by the court pursuant to [section 633.637](#).

8 Sec. 36. Section 633.639, Code 2021, is amended to read as
9 follows:

10 **633.639 Title to ~~ward's~~ protected person's property.**

11 The title to all property of the ~~ward~~ protected person is
12 in the ~~ward~~ protected person and not the conservator subject,
13 however, to the possession of the conservator and to the
14 control of the court for the purposes of administration,
15 sale or other disposition, under the provisions of the
16 law. Any real property titled at any time in the name of a
17 conservatorship shall be deemed to be titled in the ~~ward's~~
18 protected person's name subject to the conservator's right of
19 possession.

20 Sec. 37. Section 633.640, Code 2021, is amended to read as
21 follows:

22 **633.640 Conservator's right to possession.**

23 Every conservator shall have a right to, and shall take,
24 possession of all of the real and personal property of the
25 ~~ward~~ protected person. The conservator shall pay the taxes
26 and collect the income therefrom until the conservatorship is
27 terminated. The conservator may maintain an action for the
28 possession of the property, and to determine the title to the
29 same.

30 Sec. 38. Section 633.643, Code 2021, is amended to read as
31 follows:

32 **633.643 Disposal of will by conservator.**

33 When an instrument purporting to be the will of the ~~ward~~
34 protected person comes into the hands of a conservator, the
35 conservator shall immediately deliver it to the court.

1 Sec. 39. Section 633.644, Code 2021, is amended to read as
2 follows:

3 **633.644 Court order to preserve testamentary intent of ward**
4 **protected person.**

5 Upon receiving an instrument purporting to be the will of a
6 living ward protected person under the provisions of section
7 633.643, the court may open said will and read it. The court
8 with or without notice, as it may determine, may enter such
9 orders in the conservatorship as it deems advisable for the
10 proper administration of the conservatorship in light of the
11 expressed testamentary intent of the ward protected person.

12 Sec. 40. Section 633.645, Code 2021, is amended to read as
13 follows:

14 **633.645 Court to deliver will to clerk.**

15 An instrument purporting to be the will of a ward protected
16 person coming into the hands of the court under the provisions
17 of [section 633.643](#), shall thereafter be resealed by the court
18 and be deposited with the clerk to be held by said clerk as
19 provided in [sections 633.286 through 633.289](#).

20 Sec. 41. Section 633.653A, Code 2021, is amended to read as
21 follows:

22 **633.653A Claims for cost of medical care or services.**

23 The provision of medical care or services to a ward protected
24 person who is a recipient of medical assistance under chapter
25 249A creates a claim against the conservatorship for the amount
26 owed to the provider under the medical assistance program for
27 the care or services. The amount of the claim, after being
28 allowed or established as provided in this part, shall be paid
29 by the conservator from the assets of the conservatorship.

30 Sec. 42. Section 633.654, Code 2021, is amended to read as
31 follows:

32 **633.654 Form and verification of claims — general**
33 **requirements.**

34 No claim shall be allowed against the estate of a ward
35 protected person upon application of the claimant unless

1 it shall be in writing, filed in duplicate with the clerk,
2 stating the claimant's name and address, and describing the
3 nature and the amount thereof, if ascertainable. It shall be
4 accompanied by the affidavit of the claimant, or of someone for
5 the claimant, that the amount is justly due, or if not due,
6 when it will or may become due, that no payments have been
7 made thereon which are not credited, and that there are no
8 offsets to the same, to the knowledge of the affiant, except as
9 therein stated. The duplicate of said claim shall be mailed
10 by the clerk to the conservator or the conservator's attorney
11 of record; however, valid contract claims arising in the
12 ordinary course of the conduct of the business or affairs of
13 the ~~ward~~ protected person by the conservator may be paid by the
14 conservator without requiring affidavit or filing.

15 Sec. 43. Section 633.656, Code 2021, is amended to read as
16 follows:

17 **633.656 How claim entitled.**

18 All claims filed against the estate of the ~~ward~~ protected
19 person shall be entitled in the name of the claimant against
20 the conservator as such, naming the conservator, and in all
21 further proceedings thereon, this title shall be preserved.

22 Sec. 44. Section 633.660, Code 2021, is amended to read as
23 follows:

24 **633.660 Execution and levy prohibited.**

25 No execution shall issue upon, nor shall any levy be made
26 against, any property of the estate of a ~~ward~~ protected person
27 under any judgment against the ~~ward~~ protected person or a
28 conservator, but the provisions of **this section** shall not be so
29 construed as to prevent the enforcement of a mortgage, pledge,
30 or other lien upon property in an appropriate proceeding.

31 Sec. 45. Section 633.661, Code 2021, is amended to read as
32 follows:

33 **633.661 Claims of conservators.**

34 If the conservator is a creditor of the ~~ward~~ protected
35 person, the conservator shall file the claim as other

1 creditors, and the court shall appoint some competent person as
2 temporary conservator to represent the ~~ward~~ protected person
3 at the hearing on the conservator's claim. The same procedure
4 shall be followed in the case of coconservators where all
5 such conservators are creditors of the ~~ward~~ protected person;
6 but if one of the coconservators is not a creditor of the
7 ~~ward~~ protected person, such disinterested conservator shall
8 represent the ~~ward~~ protected person at the hearing on any claim
9 against the ~~ward~~ protected person by a coconservator.

10 Sec. 46. Section 633.662, Code 2021, is amended to read as
11 follows:

12 **633.662 Claims not filed.**

13 The conservator may pay any valid claim against the estate of
14 the ~~ward~~ protected person even though such claim has not been
15 filed, but all such payments made by the conservator shall be
16 at the conservator's own peril.

17 Sec. 47. Section 633.664, Code 2021, is amended to read as
18 follows:

19 **633.664 Liens not affected by failure to file claim.**

20 Nothing in [sections 633.654](#) and [633.658](#) shall affect or
21 prevent an action or proceeding to enforce any mortgage,
22 pledge, or other lien upon the property of the ~~ward~~ protected
23 person.

24 Sec. 48. Section 633.665, Code 2021, is amended to read as
25 follows:

26 **633.665 Separate actions and claims.**

27 1. Any action pending against the ~~ward~~ protected person at
28 the time the conservator is appointed shall also be considered
29 a claim filed in the conservatorship if notice of substitution
30 is served on the conservator as defendant and a duplicate of
31 the proof of service of notice of such proceeding is filed in
32 the conservatorship proceeding.

33 2. A separate action based on a debt or other liability
34 of the ~~ward~~ protected person may be commenced against the
35 conservator in lieu of filing a claim in the conservatorship.

1 Such an action shall be commenced by serving an original notice
2 on the conservator and filing a duplicate of the proof of
3 service of notice of such proceeding in the conservatorship
4 proceeding. Such an action shall also be considered a claim
5 filed in the conservatorship. Such an action may be commenced
6 only in a county where the venue would have been proper if
7 there were no conservatorship and the action had been commenced
8 against the ~~ward~~ protected person.

9 Sec. 49. Section 633.667, Code 2021, is amended to read as
10 follows:

11 **633.667 Payment of claims in insolvent conservatorships.**

12 When it appears that the assets in a conservatorship are
13 insufficient to pay in full all the claims against such
14 conservatorship, the conservator shall report such matter to
15 the court, and the court shall, upon hearing, with notice to
16 all persons who have filed claims in the conservatorship, make
17 an order for the pro rata payment of claims giving claimants
18 the same priority, if any, as they would have if the ~~ward~~
19 protected person were not under conservatorship.

20 Sec. 50. Section 633.668, Code 2021, is amended to read as
21 follows:

22 **633.668 Conservator may make gifts.**

23 For good cause shown and under order of court, a conservator
24 may make gifts on behalf of the ~~ward~~ protected person out of
25 the assets under a conservatorship to persons or religious,
26 educational, scientific, charitable, or other nonprofit
27 organizations to whom or to which such gifts were regularly
28 made prior to the commencement of the conservatorship, or on
29 a showing to the court that such gifts would benefit the ~~ward~~
30 protected person or the ~~ward's~~ protected person estate from the
31 standpoint of income, gift, estate or inheritance taxes. The
32 making of gifts out of the assets must not foreseeably impair
33 the ability to provide adequately for the best interests of the
34 ~~ward~~ protected person.

35 Sec. 51. Section 633.673, Code 2021, is amended to read as

1 follows:

2 **633.673 Court costs in guardianships.**

3 The ~~ward~~ protected person or the ~~ward's~~ protected person's
4 estate shall be charged with the court costs of a ~~ward's~~
5 protected person's guardianship, including the guardian's fees
6 and the fees of the attorney for the guardian. The court
7 may, upon application, enter an order waiving payment of the
8 court costs in indigent cases. However, if the ~~ward~~ protected
9 person or ~~ward's~~ protected person's estate becomes financially
10 capable of paying any waived costs, the costs shall be paid
11 immediately.

12 Sec. 52. Section 633.676, Code 2021, is amended to read as
13 follows:

14 **633.676 Assets exhausted.**

15 At any time that the assets of the ~~ward's~~ protected person's
16 estate do not exceed the amount of the charges and claims
17 against it, the court may direct the conservator to proceed to
18 terminate the conservatorship.

19 Sec. 53. Section 633.677, Code 2021, is amended to read as
20 follows:

21 **633.677 Accounting to ~~ward~~ protected person — notice.**

22 Upon the termination of a conservatorship, the conservator
23 shall pay the costs of administration and shall render a full
24 and complete accounting to the ~~ward~~ protected person or the
25 ~~ward's~~ protected person's personal representative and to the
26 court. Notice of the final report of a conservator shall be
27 served on the ~~ward~~ protected person or the ~~ward's~~ protected
28 person's personal representative, in accordance with section
29 633.40, unless notice is waived. An order prescribing notice
30 may be made before or after the filing of the final report.

31 Sec. 54. Section 633.681, Code 2021, is amended to read as
32 follows:

33 **633.681 Assets of minor ~~ward~~ protected person exhausted.**

34 When the assets of a minor ~~ward's~~ protected person's
35 conservatorship are exhausted or consist of personal property

1 only of an aggregate value not in excess of twenty-five
2 thousand dollars, the court, upon application or upon its
3 own motion, may terminate the conservatorship. The order
4 for termination shall direct the conservator to deliver any
5 property remaining after the payment of allowed claims and
6 expenses of administration to a custodian under any uniform
7 transfers to minors Act. Such delivery shall have the same
8 force and effect as if delivery had been made to the ~~ward~~
9 protected person after attaining majority.

10 Sec. 55. Section 633.682, Code 2021, is amended to read as
11 follows:

12 **633.682 Discharge of conservator and release of bond.**

13 Upon settlement of the final accounting of a conservator,
14 and upon determining that the property of the ~~ward~~ protected
15 person has been delivered to the person or persons lawfully
16 entitled thereto, the court shall discharge the conservator and
17 exonerate the surety on the conservator's bond.

18 EXPLANATION

19 The inclusion of this explanation does not constitute agreement with
20 the explanation's substance by the members of the general assembly.

21 This bill relates to the opening, administration, and
22 termination of adult guardianships and adult and minor
23 conservatorships, and makes terminology changes to the probate
24 code.

25 The bill provides that notice of a guardianship proceeding
26 must be given to any adult with whom the minor has lived with
27 for the six months immediately preceding the filing of the
28 petition.

29 The bill provides qualifications for a person to serve as a
30 court visitor.

31 The bill provides that a court visitor will be discharged
32 upon the appointment of a guardian or conservator unless
33 ordered by the court to continue.

34 The bill specifies that a court-ordered professional
35 evaluation conducted at or before a hearing on a petition for

1 the appointment of a guardian or conservator for a minor must
2 be filed with the court.

3 The bill provides that if the proposed guardian has
4 undergone the required background checks within six months
5 prior to the filing of the petition and the background checks
6 have been provided to the court, the proposed guardian does
7 not need to undergo a new background check. The bill further
8 provides that the results of the background checks may be
9 shared with the respondent, respondent's attorney, the
10 protected person's attorney, and the proposed guardian or
11 conservator.

12 The bill changes Code references regarding the emergency
13 appointment of a temporary guardian or conservator.

14 The bill also directs that the initial verified care plan
15 includes any steps the guardian plans to take to develop
16 or restore the protected person's ability to manage the
17 conservatorship estate, estimate of the total amount of fees
18 the guardian anticipates charging, and instructs the guardian
19 to file an amended plan should there be a substantial change
20 in circumstances.

21 The bill provides instructions to the conservator to provide
22 notice of the filing of the initial plan and the timeline for
23 objections.

24 The bill further provides for new disclosures that written
25 and verified reports must include.

26 The bill changes the standard of proof needed to be found
27 by the court concerning termination of guardianships and
28 conservatorships from clear and convincing evidence to a
29 preponderance of the evidence.

30 The bill replaces the term "ward" with "protected person"
31 throughout the probate code.